THE HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO. 11410 of 2004
10.08.2007

Between:

P.R.R.Jyothi W/o B.Bhushanam
Hyderabad

... Petitioner

And:

Registrar General,
High Court of AP,
Hyderabad and others

... Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO. 11410 OF 2004

ORAL ORDER : (Per Hon'ble Sri Justice G.Raghuram)

The writ petition, by a Steno-typist working (as on the date of the institution of the writ petition), in the Court of XVI Metropolitan Magistrate, Hyderabad is against the order dated 30.8.2003 of the 1st respondent confirming the order dated 26.10.2002 of the disciplinary authority – Metropolitan Sessions Judge, Hyderabad, imposing on her the minor penalty of

Censure for the misconduct of disobedience of instructions of the Presiding Officer to take dictation on 25.3.2000.

On 8.3.2000 the Presiding Officer of the Court of II Metropolitan Sessions Court, Hyderabad ('Presiding Officer') issued a memo to the petitioner alleging that despite repeated instructions and directions the petitioner failed to comply with and was unwilling to take dictation at the residence of the officer causing inconvenience. On 18.3.2000 the petitioner sent up an explanation stating that she was residing at Miyapur, having small children and was not keeping good health and as the children are school going it is difficult for her to attend the residence of the officer for taking dictation and that she had already explained that in view of the difficulty she was willing to take dictation in the court itself if the officer is prepared to spare time therefor. The inability to take dictation at the residence of the officer was on that account and not intentional, was also the explanation.

On 25.3.2000 another memo was issued to the petitioner stating that in the morning at about 11.15 am when the Presiding Officer commenced dictating judgment, after taking down a para, the petitioner abruptly left the chamber promising to return within a few minutes but did not turn up till 4.00 pm and when the officer sent a message through an Attender, the petitioner replied that she indeed to go on leave and would not come for dictation. The petitioner submitted her explanation to this memo on 31.3.2000. After a lapse of about 2 years the disciplinary authority by a memo dated 8.3.2002 called upon the petitioner to submit her explanation for the misconduct of disobedience of the order of the Presiding Officer, on the basis of the memo of the Presiding Officer dated 25.3.2000. The petitioner submitted her explanation to the show cause notice,

on 21.3.2002. Thereupon the disciplinary authority on 10.5.2002 passed an order appointing an officer to conduct a preliminary enquiry on the allegation.

The preliminary Enquiry Officer submitted a report on 2.7.2002. As apparent from the report, the preliminary Enquiry Officer made a detailed analysis of the material on record including the memo issued to the petitioner as well as the short-hand note books maintained by the petitioner and concluded that on 25.3.2000 the petitioner had taken dictation for about 6 ½ lines in pencil and left the chamber abruptly and thereafter did not turn up. On the basis of the report of the preliminary Enquiry Officer, the disciplinary authority issued a show cause notice on 08.08.2002 intimating the petitioner as to the findings of the preliminary Enquiry Officer and calling upon her to show-cause/explain why an annual increment be not postponed for the misconduct alleged and established.

Thereupon and eventually by proceedings dated 26.10.2002 on a detailed and cogent analysis of the material on record, the disciplinary authority found the petitioner guilty of the misconduct of disobedience of the order of the Presiding Officer with regard to dictation on 25.3.2000. However, in view of the fact that subsequent to that event there was no complaint of such disobedience by the petitioner, the disciplinary authority considered that the punishment of Censure was appropriate and accordingly imposed the minor penalty of Censure.

Aggrieved thereby the petitioner preferred an appeal to the 1st respondent. The 1st respondent by the order dated 30.8.2003 dismissed the appeal confirming the conclusion of the disciplinary authority.

The learned counsel for the petitioner contends that the delay of nearly 2 years from the date of issuance of the memo

dated 25.3.2000 to the date of show cause notice dated 8.3.2002 is unexplained and that this delay has caused her prejudice. The learned counsel for the petitioner however would not explain what is the prejudice caused to the petitioner on account of the delay in initiating the disciplinary proceedings. The petitioner does not contend that as a consequence of the delay evidence was lost which the petitioner could marshal in her defence. The petitioner was not under suspension or some such disability whereby it could be contended that the delay in initiating the disciplinary proceedings had caused the charged employee any prejudice. It is not the petitioner's contention that the postponement of the imposition of penalty of Censure by two years visited the petitioner with any disability or caused her any prejudice. This contention is therefore misconceived.

The other contention is directed against the appellate order of the 1st respondent dated 30.08.2003. The learned counsel for the petitioner would State that the entire discussion and thrust of the reasoning in the appellate order dated 30.8.2003 is in respect of the earlier memo issued by the Presiding Officer dated 8.3.2000 (with regard to the failure of the petitioner to take dictation at the residence of the Presiding Officer) and that neither the preliminary Enquiry Officer nor the disciplinary authority proceeded against the petitioner nor did the minor punishment of Censure imposed was founded on the basis of the memo dated 8.3.2000.

The learned Standing Counsel for the 1st respondent Mr. Sanjay Kumar would contend that though the appellate order dated 30.8.2003 does mention the fact of disobedience of the Presiding Officer's instructions on 25.3.2000 by the petitioner, the order disproportionately discusses the failure of the petitioner to take dictation at the Presiding Officer's residence,

which allegation was not in issue nor is the basis on which the petitioner was eventually visited with the penalty of Censure.

In the facts and circumstances this court is satisfied that on a true and fair analysis of the order of the 1st respondent dated 30.08.2003, the entire analysis and discussion is tangential to the issue on hand that was required to be considered by the appellate authority. The only allegation against the petitioner and in respect of which she was visited with the minor penalty of Censure was the incident on 25.3.2000, which resulted in the memo being issued by the Presiding Officer complaining of abrupt abscondance of the petitioner from the taking of dictation and failing to return despite being sent for through an Attender. The incident of 8.3.2000 was eschewed on the ground that the Presiding Officer had not complained of disobedience of his instructions to attend to dictation at his residence subsequent to 8.3.2000. As the appellate authority analyzed the appeal of the petitioner on wholly extraneous and irrelevant grounds, the appellate order is unsustainable.

As a result of the above analysis it would normally be sufficient to set aside the order of the 1st respondent dated 30.08.2003 and remand the matter to the 1st respondent for consideration *de novo*. However we consider it appropriate in the public interest to place on record that the disciplinary authority and the 1st respondent do not appear to have sufficiently been sensitized to the need for discipline and an appropriate level of commitment by the employees of the Judicial Department.

Every public employment is a charge on the tax payer. It is not open to any person in public office to contend that the performance of functions of the office to which one is appointed

is difficult of compliance on account of any personal reasons. There may be occasional and temporary periods in the tenure of a public official when the performance of functions is difficult and in which event the employee proceeds on leave – casual or regular and if sanctioned. But while in active service it is not open to an employee to contend that on account of personal circumstances he/she is unable to perform the duties for which the appointment is made and the salary paid from the public exchequer. Where the conduct of the petitioner falls and at what level of gravity in the above context and the nature of public employment, is an area to which sufficient attention does not appear to have been devoted either by the disciplinary authority or by the appellate authority in this case. We hope and trust that the appellate authority in considering the issue after remand will bear these aspects also in mind before proceeding to consider the appeal *de novo*.

The writ petition is partly allowed to the extent above. The order of the 1st respondent bearing ROC No. 7/2003 C-II/1, dated 30.08.2003 is set aside. The 1st respondent shall now expeditiously consider and dispose of the appeal. No order as to costs.

Dt: 10.08.2007 ----------

Pvsn/Tsnr Justice G.Raghuram

Justice S.Ananda Reddy